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Case Note: It Doesn't Have to End This Way: The Minnesota Supreme Court Declares That the Sentence of Life without Release as Imposed on a Juvenile Is Neither Cruel nor Unusual in State v. Martin

Micala R. Gordon

CASE NOTE: IT DOESN'T HAVE TO END THIS WAY: THE MINNESOTA SUPREME COURT DECLARES THAT THE SENTENCE OF LIFE WITHOUT RELEASE AS IMPOSED ON A JUVENILE IS NEITHER CRUEL NOR UNUSUAL IN *STATE v. MARTIN*

Micala R. Gordon†

† J.D. Candidate 2010, William Mitchell College of Law. The author wishes to thank Professor Ted Sampsell-Jones for his invaluable commentary; the law review staff, for help in preparing this article for publication; and Paul Sand and Laura Bartlow, for their superbly efficient editorial contributions.

We live in what has been aptly termed 'the century of the child'. Never before have the obligations of society to its more helpless members been so generally recognized; and of all forms of helplessness that of childhood makes the strongest and most universal appeal.[1]

Life without parole sends the message, "You are not worthy of rehabilitation. You're worthless. You're a monster. You're not fit for society. And you're a dangerous, rabid animal that needs to be kept away."[2]

I. INTRODUCTION

On an evening in early May 2006, while on a walk with his cousin through their north Minneapolis neighborhood, Christopher Lynch was shot multiple times.[3] He was rushed to the hospital, but later died from his injuries.[4] Six minutes after Lynch was pronounced dead, the

1. Edward F. Waite, *New Laws for Minnesota Children*, 1 MINN. L. REV. 48, 48 (1917). Waite emphasized that the revision of Minnesota child welfare laws was of great importance. *Id.* at 49.

2. *Frontline: When Kids Get Life* (PBS television broadcast May 8, 2007). Quote of Jacob Ind. He was fifteen at the time of his crime, and twenty-nine when the program aired. *Id.*

3. Brief of Appellant at 6–7, State v. Martin, 773 N.W.2d 89 (Minn. 2009) (No. A07-1262) (citing Transcript of Record at 1485, *Martin*, 773 N.W.2d 89 (No. A07-1262) [hereinafter Transcript]). Notably,

[t]he trial transcript was provided to appellant in consecutively paginated volumes I through XXI. However, Vol. VI ends on page 959 and Vol. VII begins on page 959. Similarly, Vol. VIII begins on page 959 and duplicates the numbering for Vol. VII. Appellant informed the court reporter of this problem but no correction was offered or performed. It was later discovered that the court reporter misrepresented having transcribed and delivered the January 16, 2007 transcript. This transcript was subsequently requested by the parties and transcribed in a separate volume with separate pagination.

Id. at 6 (emphasis added). The court did not address or mention this issue in the *Martin* opinion.

4. *Id.* at 8 (citing Transcript, *supra* note 3, at 2072–73).

police arrived at the crime scene and began their investigation.[5] This sequence of events occurred against a backdrop of sporadic yet violent conflicts between rival gangs, the Tre Tre Crips and the 19 Block Dipset (19s), who controlled different territories in and around north Minneapolis.[6] Christopher's cousin, Jermaine Mack-Lynch, testified that violence would occur when members from these groups encountered one another.[7]

Lamonte Martin, the young man subsequently arrested and indicted for first-degree murder and commission of a crime for benefit of a gang,[8] did not turn eighteen until June 27, 2006—some eight weeks after the shooting.[9] Yet in late January 2007, he was automatically certified to stand trial as an adult, pursuant to Minnesota statutes.[10] Less than two months later, on March 6, 2007, a Hennepin County jury returned a guilty verdict on both counts.[11] The district court entered judgment of conviction of first-degree premeditated murder against Martin, which triggered another statutory provision: a sentence of life without release (LWOR).[12] The certification and sentence were not considered in light of the individual characteristics of Martin's circumstance.[13] The statutory apparatus in place prec-

5. Lynch was pronounced dead at the hospital at 7:14 p.m. *Id.* (citing Transcript, *supra* note 3, at 2087). The police arrived at 7:20 p.m. *Id.* (citing Transcript, *supra* note 3, at 1427).

6. *Id.* at 6 (citing Transcript, *supra* note 3, at 1537). "[T]he use of the term 'gangs' should not be interpreted as appellant's conceding that the state proved existence of any gangs under the statutory definition." *Id.* at n.1.

7. Brief of Appellant at 6, *Martin*, 773 N.W.2d 89 (No. A07-1262) (citing Transcript, *supra* note 3, at 1484). The rivalry may have commenced after Jermaine, a Tre Tre member, and one of the 19s got into a dispute over a girl, and Jermaine shot the 19 in the neck. *Id.* (citing Transcript, *supra* note 3, at 1602).

8. *See* MINN. STAT. §§ 609.185(a)(1), 609.229, subdiv. 2 (2008).

9. *Martin*, 773 N.W.2d at 99 n.5. Christopher Lynch was shot and killed May 3, 2006. *Id.*

10. *See* MINN. STAT. § 260B.101 (2008) (giving juvenile court original jurisdiction over "delinquent" children), *and* MINN. STAT. § 260B.007, subdiv. 6(b) (2008) ("The term delinquent child does not include a child alleged to have committed murder in the first degree after becoming 16 years of age . . . ."). Because he was accused of murder in the first degree, Martin could not be classified, under statute, as a delinquent child, and thus could not be subject to the juvenile court's jurisdiction. Instead, he was within the district court's jurisdiction, as an adult offender would be.

11. Brief of Appellant at 2, *Martin*, 773 N.W.2d 89 (No. A07-1262).

12. *See* MINN. STAT. § 609.185, subdiv. a(1) (2008) (life imprisonment for committing murder in the first degree when premeditated); MINN. STAT. § 609.106, subdiv. 2 (2008) (life without parole for committing premeditated murder in the first degree).

13. According to [Martin's] school records,
"[H]e had severe deficits in reading, writing skills, cognitive ability and attention

luded any kind of individualized or evaluative process.[14]

The Minnesota Supreme Court recently indicated that this statutory scheme, and its culmination in the imposition of LWOR on a juvenile, is neither cruel nor unusual as contemplated by the Eighth Amendment of the U.S. Constitution and the Constitution of the State of Minnesota.[15] The court concluded that no aspect of Martin's case took it beyond the bounds of federal and state constitutionality.[16] On October 8, 2009, it affirmed Martin's conviction and his sentence of life without release.[17] He is twenty-one years old.

This note will first examine the foundation of juvenile justice, including its history, the philosophy behind the early juvenile courts, and several key judicial and legislative trends that have shaped juvenile justice jurisprudence in this century and last.[18] The note then discusses the *Martin* decision in detail[19] and, in a subsequent analysis,[20] posits that both the majority opinion and the dissent missed a genuine opportunity to, at the very least, call attention to a statutory scheme that effectively eliminates any chance for individualized consideration of the factors of cases like Martin's.[21] This note then suggests that, depending on the outcome of two cases pending at the U.S. Supreme Court, Martin's sentence of life without release may be abrogated anyway.[22] While acknowledging the difficulty of constitu-

span. At age fourteen, he was functioning intellectually in the borderline range and at the sixth percentile. He qualified for special education services . . . ." The trial court . . . was precluded from . . . considering . . . [these] records.
Brief of Appellant at 17, *Martin*, 773 N.W.2d 89 (No. A07-1262).

14. *Id.* at 16; MINN. STAT. § 260B.007, subdiv. 6(b) (2008).

15. *Compare* MINN. CONST. art. I, § 5, which provides that no "cruel or unusual punishments [be] inflicted" (use of "or" signaling disjunctive), *with* U.S. CONST. amend. VIII, which prohibits "cruel and unusual punishments" (use of "and" signaling conjunctive). Minnesota's Constitution affords its citizens greater protections than its federal counterpart. *See also* Brief of Appellant at 22, *Martin*, 773 N.W.2d 89 (No. A07-1262) ("The state constitution provides more protection because the disjunctive 'or' allows a court to prohibit a punishment if the punishment is either cruel or unusual." (citing State v. Mitchell, 577 N.W.2d 481, 488 (Minn. 1998))).

16. *Martin*, 773 N.W.2d at 99.

17. *Id.* at 89; Maricella Miranda, *Minnesota Supreme Court: Life Without Parole Upheld for Juvenile: Justices Say 'Cruel and Unusual' Description Doesn't Fit Case*, ST. PAUL PIONEER PRESS (Minn.), Oct. 9, 2009, at B8; Rochelle Olson, *Juvenile's Life Term is Legal, Court Says: State Supreme Court Says Life in Prison for 17-Year-Old is Neither Cruel Nor Unusual*, STAR TRIB. (Minneapolis), Oct. 9, 2009, at Local / Metro.

18. *See infra* Part II.A–B.

19. *See infra* Part III.

20. *See infra* Part IV.

21. *See infra* Part IV.B.

22. *See infra* Part IV.C.

tional line-drawing, this note goes on to review and suggest some possible approaches that courts, legislatures, and other institutions could take to begin to address the issue of LWOR sentencing for juveniles in a more thoughtful and proportionate way, and how the Minnesota Supreme Court had a perfect forum in *Martin* in which to call attention to these measures.[23] The note concludes by explaining that by passively endorsing a cruel and misguided statutory scheme, the Minnesota Supreme Court may have effectively undermined this state's commitment to forward-thinking juvenile justice.[24]

II. HISTORY

A. The Juvenile Justice System

Julian Mack, a noted judge in the formative years of the juvenile justice system, explained his professional approach:

> The problem for determination by the judge is not, Has this boy or girl committed a specific wrong, but What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.[25]

1. Creation of the Juvenile Court

Americans have historically viewed juvenile delinquents as less culpable than adult offenders.[26] As the nineteenth century drew to a close, Progressive thinkers began to conceptualize childhood as a crucial period of development and growth, as opposed to the competing notion that children were "small adults."[27] Accompanying this notion was a more scientific understanding of social control—

23. *See infra* Part VI.D.

24. *See infra* Part V.

25. Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119–20 (1909).

26. *See generally* Barry C. Feld, *A Century of Juvenile Justice: A Work in Progress or a Revolution That Failed?*, 34 N. KY. L. REV. 189 (2007) (analyzing changes in juvenile justice policies over the past century); ANTHONY M. PLATT, THE CHILD SAVERS: THE INVENTION OF DELINQUENCY 137–63 (1977) (explaining the history of, and the philosophy behind, the development of the juvenile court).

27. Feld, *supra* note 26, at 189. *See also* David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, *in* A CENTURY OF JUVENILE JUSTICE 42, 46 (Margaret K. Rosenheim et al. eds., 2002) ("The inventors of the juvenile court considered themselves part of a humanitarian movement which, in the nineteenth century, had transformed the status of children from the sole property of their fathers into a dependent class in need of state protection.").

what Feld referred to as positive criminology[28]—that inspired reformers to attempt to identify the causes of crime and to move from punishment to a more holistic style of treatment of offenders.[29]

Similarly, juvenile courts were created to address the differences between adults and children. The focus of the juvenile justice system was rehabilitation, not punishment. To this end, juvenile court judges could consider developmental, social, and psychological factors of every individual child who came before them.

Such judicial discretion was particularly important in an era when immigrants were coming to America and into its courtrooms from all over the world. Indeed, from their inception, juvenile courts identified as a cognizable goal the socialization and "Americanization" of the children of immigrants pouring into the rapidly-expanding industrial centers of the East and Midwest.[30] The examination of each child's situation allowed juvenile courts to design an individualized, constructive response to the child's delinquency issues, rather than lumping all child offenders together and disciplining them as though no differences existed among them.[31] The focus of the juvenile justice system was on rehabilitation, not on punishment.[32] Another difference between the new juvenile courts and their adult

28. Feld, *supra* note 26, at 189.

29. *Id.* ("Jurisdiction over dependent as well as delinquent children reflected juvenile courts' broader role as a child-saving welfare agency and not simply a 'junior' criminal court."). *See also* Lisa McNaughton, *Extending Roper's Reasoning to Minnesota's Juvenile Justice System*, 32 WM. MITCHELL L. REV. 1063 (2006) (asserting that the long-term interests of public safety, fairness, and the sensible administration of justice can all be appeased while addressing the brain development realities of juveniles, concepts of deterrence, and the goals of juvenile justice). *See also* DAVID S. TANENHAUS, JUVENILE JUSTICE IN THE MAKING 4 (2004) (emphasizing that formative juvenile court legislation "asserted state responsibility for both dependent and delinquent children and thus merged concerns about child welfare with crime control").

30. Feld, *supra* note 26, at 189.

31. *See, e.g.*, TANENHAUS, *supra* note 29, at 4 (emphasizing that juvenile court legislation "asserted state responsibility for both dependent and delinquent children and thus merged concerns about child welfare with crime control."); *see also* MINN. STAT. § 260B.001, subdiv. 2 (2008) ("The purpose of the laws relating to children alleged or adjudicated to be delinquent is to promote the public safety and reduce juvenile delinquency by maintaining the integrity of the substantive law prohibiting certain behavior and by developing individual responsibility for lawful behavior.").

32. *See In re* Gault, 387 U.S. 1, 15–16 (1967) (noting that the idealistic reformers who developed the juvenile system embraced the notion that "[t]he child was to be 'treated' and 'rehabilitated' and the procedures, from apprehension through institutionalization, were to be 'clinical' rather than punitive"); Feld, *supra* note 26, at 189; Mack, *supra* note 25, at 107; McNaughton, *supra* note 29, at 1063–64; *supra* notes 26–29 and accompanying text.

counterparts was the procedural informality. In the juvenile courts, there were no trials by juries, trials were not public, and there were no constitutionally-guaranteed rights for the juveniles accused in these courts.[33]

2. Juvenile Courts: Rehabilitative in Theory, Punitive in Practice

By the mid-1960s, the realities of heavy caseloads and budget shortfalls undermined the noble aims of these juvenile courts.[34] McNaughton has described most juvenile treatment facilities at that time as "factory-like."[35] Likely because of the strain on this relatively new niche of young offender treatment, ideological underpinnings had given way to cut corners and an ever-decreasing availability of follow-up treatment to prevent recidivism.[36] Additionally, few procedural safeguards were in place to assure that the consequences were imposed only after guilt was clearly established.[37] Put quite simply, "purely punitive solutions were easier to apply."[38]

3. The U.S. Supreme Court Steps In—Due Process for Juveniles

Many of these jurisdictions were under-staffed and under-funded, so it is not surprising that due process was significantly compromised—if indeed it ever existed—in this nascent juvenile system.

33. *See generally* Wright S. Walling & Stacia Walling Driver, *100 Years of Juvenile Court in Minnesota—A Historical Overview and Perspective*, 32 WM. MITCHELL L. REV. 883 (2006) (discussing the historical developments which led to the current procedures and status of juvenile courts in Minnesota, and asserting that the issues addressed by the juvenile court are some of the most important dealt with by any court system, thus an influx of commitment, time, money, and expertise is necessary).
The fact that the juvenile court exercised the power to take children from their parents and to commit children to state training schools by procedures that did not involve a jury or a public trial, the right to remain silent, the right to counsel and the rest, raised serious questions of constitutional law. The power of the juvenile court to operate in this informal fashion was almost universally sustained in state courts by characterizing the proceedings as civil rather than criminal.
Id. at 893–94*; see also* Mason P. Thomas Jr., *Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 300 (1972) (noting that throughout the seventeenth and eighteenth centuries, courts rarely intervened against harsh discipline). *But see* JOHN DEMOS, PAST, PRESENT AND PERSONAL: THE FAMILY AND THE LIFE COURSE IN AMERICAN HISTORY 29 (1986) (discussing the attentiveness of officials and their eagerness to intervene when a parent's or parents' conduct endangered their children).

34. McNaughton, *supra* note 29, at 1064.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

Predictably, the dramatically different results yielded by juvenile courts nationwide caught the attention of the U.S. Supreme Court. During the 1960s, the Court took several opportunities to explicitly declare that juveniles were entitled to some of the same due process procedural safeguards as adults. In 1966, the Supreme Court decided *Kent v. United States*.[39] That case came before the Court after sixteen-year-old Morris Kent, on probation for earlier offenses, was charged with eight counts, including house-breaking, robbery, and rape.[40] Under a District of Columbia statute, the trial judge was not required to hold a hearing, make findings, nor give any reason whatsoever for waiving the juvenile from juvenile court jurisdiction to adult court jurisdiction and to adult court sentencing.[41] When Kent's new allegations came before the trial court judge, he waived jurisdiction in juvenile court. This decision to waive the case was based almost exclusively on his personal estimation of Morris Kent's "amenability to treatment under the facilities" of the juvenile court.[42] That amenability, apparently, was nil. Kent was tried in adult court.[43] A jury found him not guilty by reason of insanity for the rape charge, but guilty on six counts of housebreaking.[44]

The U.S. Supreme Court vacated Kent's conviction[45] because of the arbitrariness[46] and noted lack of due process in Kent's transfer to adult court out of juvenile court.[47] Wright S. Walling and Stacia Walling Driver observed that the *Kent* case was crucial because it put to rest the issue of whether or not due process had a place in the juvenile justice system:

> In the first case of its kind involving a child, the Supreme Court in *Kent* established a standard of due process, taken

39. 383 U.S. 541 (1966).

40. *Id.* at 543, 548.

41. *Id.* at 546–48.

42. MONRAD G. PAULSEN & CHARLES H. WHITEBREAD, JUVENILE LAW AND PROCEDURE 13 (N. Corinne Smith ed., 1974), *noted in* Walling & Driver, *supra* note 33, at 903–04.

43. *Kent*, 383 U.S. at 550. One wonders how it could have been "a jury of his peers," though there is no constitutional requirement that it had to be. *See* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . .").

44. *Kent*, 383 U.S. at 550.

45. *Id.* at 564–65 (vacating conditionally for a hearing *de novo* on waiver at the district court.) Kent's conviction would only be vacated with a district court finding that waiver was improper. *Id.*

46. *Id.* at 561.

47. *Id.* at 564–65.

> from the Fourteenth Amendment, and applied it to juvenile proceedings. As history has shown, and perhaps not surprisingly given the fact that juvenile courts are and were by that point agencies of the government, some juvenile court judges continued to argue that due process had no place whatsoever in a court for children. *Kent* settled the point and Mr. Justice Fortas speaking for the Supreme Court stated, "[W]e . . . hold that the hearing must measure up to the essentials of due process and fair treatment."[48]

In 1967, the Court decided *In re Gault*.[49] In that case out of Arizona, the Court concluded that committing the fifteen-year-old defendant was a clear violation of the Fourteenth Amendment.[50] Neither the juvenile, Gerald Gault, nor his mother, had been given adequate notice of the charges against Gerald—allegations that he'd made obscene phone calls to a neighbor.[51] Gault was adjudicated delinquent after he made an admission at the juvenile court hearing, where he was not advised of rights that the Supreme Court would later find he was entitled to, such as a right against self-incrimination and the right to counsel.[52] The Arizona Supreme Court affirmed on appeal.[53]

The U.S. Supreme Court held that, in addition to having a right to a notice of charges,[54] the juvenile had a right to counsel,[55] to confrontation and cross-examination of witnesses,[56] and the privilege against self-incrimination.[57] None of these had been afforded to juveniles prior to the Supreme Court's ruling in *Kent*.[58]

The Court's opinion in *In re Winship*[59] declared that the reasonable-doubt standard of criminal law is constitutional in nature and that

48. Walling & Driver, *supra* note 33, at 904 (footnotes omitted).
49. 387 U.S. 1 (1967).
50. *Id.*
51. *Id.* at 4–5.
52. *Id.* at 42.
53. *Id.* at 9–10.
54. *Id.* at 33.
55. *Id.* at 41.
56. *Id.* at 42.
57. *Id.* at 55.
58. *See* PAULSEN & WHITEBREAD, *supra* note 42, at 12, *noted in* Walling & Driver, *supra* note 33, at 903 ("For almost seventy years 'young persons were adjudicated delinquent, dependent, and neglected [during] informal proceedings less protective of [their] individual rights than those available to an adult criminal.' [T]he Supreme Court reviewed the first of several juvenile court cases on the issue of due process in *Kent v. United States*.").
59. 397 U.S. 358 (1970).

juveniles are entitled to proof beyond that standard when charged with violation of a criminal law.[60]

These due process reforms to the juvenile justice system appeared to increase constitutional protections for youth, but they have not escaped criticism in the forty years since their implementation.[61] The explicit granting of rights in and of itself is not problematic, but the juvenile courts to which these rights were applied became, as a result, more formalistic and adversarial in nature.[62] Consequently, critics have drawn parallels between the adult system and what the juvenile system transformed into because of these reforms.[63]

Moreover, the judicial apparatus designed to serve the youth appeared to continue to drift from its moorings of rehabilitative theory, and state legislatures certainly facilitated that drift.[64] State legislators, seeking votes, pledged to "get tough" on crime if elected. The rate at which juveniles committed violent crimes—rapes, robberies, and aggravated assaults—remained relatively stable between 1973 and 1989, but it increased by almost 43% between 1989 and 1993.[65] And despite a modest decline in the juvenile murder arrest rate between 1993 and 1995, the 1995 rate was double that of 1985.[66] "Many of these offenders were friends and acquaintances of their victims."[67]

Scary and staggering statistics like this provided politicians with fuel for the "get tough on crime" fire they were fanning. Additionally, the media sensationalized some highly disturbing cases—making the most heinous exceptions seem like the rule of juvenile criminal behavior.[68] During a particularly drastic spike in violent juvenile

60. *Id.* at 368.

61. McNaughton, *supra* note 29, at 1065.

62. *Id.*

63. *See* BARRY C. FELD, BAD KIDS: RACE AND THE TRANSFORMATION OF THE JUVENILE COURT 287 (1999). Feld argues that the due process reforms ended up transforming the juvenile system into a "scaled-down, second-class criminal court for young people." *Id.*

64. *Id.*

65. HOWARD N. SNYDER ET AL., OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1997 UPDATE ON VIOLENCE 16 (1997).

66. *Id.* at 20.

67. NAT'L CRIM. JUSTICE ASS'N, U.S. DEP'T OF JUSTICE, JUVENILE JUSTICE REFORM INITIATIVES IN THE STATES: 1994-1996, at ii (1997) [hereinafter OJJDP REPORT], *available at* http://www.ncjrs.gov/pdffiles/reform.pdf.

68. *See, e.g.*, Timothy Egan, *Where Rampages Begin: A special report. From Adolescent Angst to Shooting Up Schools*, N.Y. TIMES, June 14, 1998, at 11 ("In looking at the 221 deaths at American schoolyards over the last six years, what leaps out is how the shootings changed dramatically in the last two years—not the number, but the type."); Ashbel S. Green & Janet Filips, *The Suspect: Kipland Kinkel's Dark Side Was No*

crime between 1987 and 1991, legislatures trotted out a more punitive—and less discerning—approach to deal with child offenders.[69]

B. Juvenile Justice in Minnesota

1. The Task Force

In November 1992, the Advisory Task Force on the Juvenile Justice System was convened by order of the Minnesota Supreme Court, and charged by the Legislature to conduct a study of the juvenile justice system and to make recommendations based on these findings.[70]

The Task Force subsequently promulgated several key findings. First, the pattern of criminal behavior to which the juvenile justice system needed to respond had changed dramatically since the system was put in place.[71] Second, community-based responses to juvenile crime were preferable to the institutionalization of juveniles.[72] Third, and most significantly, Minnesotans wished to retain rehabilitation as one of the goals of the juvenile justice system and, therefore, found value in retaining a separate system of response to crime committed by juveniles.[73]

Secret to His Peers, THE OREGONIAN, May 22, 1998 (Fifteen-year-old Kinkel killed four and injured twenty-two during a murder spree in his high school cafeteria. Despite his widely-known obsession with death and violence, the signs were largely ignored).

69. C. Antoinette Clarke, *The Baby and the Bathwater: Adolescent Offending and Punitive Juvenile Justice Reform*, 53 U. KAN. L. REV. 659, 674–75 (2005). *See also generally* OJJDP REPORT, *supra* note 67 (offering background information and statistics regarding the increase in juvenile violent crimes and case studies of juvenile reform initiatives).

70. Symposium, *Minnesota Supreme Court Advisory Task Force on the Juvenile Justice System: Final Report*, 20 WM. MITCHELL L. REV. 595 (1994).

This year-long study, requested in response to the concern about juvenile crime, is a comprehensive look at several significant aspects of Minnesota's juvenile justice system. The Task Force's legislative mandate was limited to consideration of several juvenile justice system procedural and policy matters, specific to the area of juvenile delinquency.

Id. at 598. The Task Force relied on "statistical data, expert testimony, information from site visits to residential placement facilities, information from other states, and public testimony." *Id.* at 599.

71. *Id.*

72. *Id.*

73. *Id.* This attitude was reflected in a nationwide public opinion survey on juvenile crime conducted in 1991. IRA M. SCHWARTZ, JUVENILE JUSTICE AND PUBLIC POLICY: TOWARD A NATIONAL AGENDA 214 (1992). Of those surveyed, seventy-eight percent felt that the primary purpose of the juvenile court should be to treat and

This third finding was significant because it contravened the perception that the rise in juvenile crime was best addressed by a more punitive system of juvenile justice, which was the legislative trend in many jurisdictions.[74] The Task Force's conclusions suggested that the old, seemingly obsolete doctrine of rehabilitation was still very much a part, if only a theoretical one, of juvenile justice and policy in Minnesota at the close of the twentieth century.

2. Beyond Due Process for Juveniles: Minnesota's Reaction to and Interpretation of U.S. Supreme Court Precedent

The U.S. Supreme Court has applied a comparison between culpability and punishment in order to implement the concept of the Eighth Amendment's prohibition of cruel and unusual punishment.[75] This Eighth Amendment proportionality analysis requires a court to examine not only the crime's gravity, but also the defendant's relative culpability.[76] In *Atkins v. Virginia*,[77] the Court explained that the Eighth Amendment guarantees individuals the right to not be subjected to excessive sanctions in proportion to their culpability.[78] The Court held that because intellectually disabled adults were less culpable for their actions than the average adult offender, the imposition of the death penalty on this group violated the Eighth Amendment.[79]

The Supreme Court applied *Atkins*'s reasoning to juveniles in *Roper v. Simmons*.[80] The Court referred to "'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual."[81] By evaluating then-current sociological and scientific data and applying those findings to their proportionality framework, the Court concluded that juveniles could not be imputed to possess the same level of culpability as adult criminals.[82] The Court also noted

rehabilitate juveniles. *Id.* at 216. Only twelve percent felt that the purpose should be to punish them. *Id.* A small percentage, ten percent, indicated that it should serve both purposes equally. *Id.*

74. See OJJDP REPORT, *supra* note 67, at Conclusions.

75. *See* U.S. CONST. amend. VIII. *See also* Atkins v. Virginia, 536 U.S. 304 (2002).

76. 536 U.S. 304 (2002).

77. *Id.*

78. *Id.* at 311.

79. *Id.* at 319.

80. 543 U.S. 551 (2005) (holding the death penalty, as applied to juveniles, unconstitutional).

81. *Id.* at 561 (quoting Trop v. Dulles, 356 U.S. 86, 100–01 (1958)).

82. *Id.* at 569–70 (asserting peer pressure, immaturity, and incomplete identity

voluminous literature indicating a near-universal trend in international law rejecting capital punishment for juveniles.[83] That the endorsement of the United States was so often conspicuously absent from these international dialogues clearly troubled the Court.[84]

Based on these findings from the scientific, sociological, and international communities, the Court concluded that the penological justifications for the death penalty did not align with punishments that were psychologically and socially appropriate for juveniles.[85] The *Roper* majority commented, "Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult."[86] As for deterrence, the Court found little evidence to prove that the possibility of a punishment of death

formation as the primary factors for diminished culpability).

83. *Id.* at 575–78. On appeal to the Supreme Court, Simmons and a number of *amici* emphasized that Article 37 of the United Nations Convention on the Rights of the Child "contains an express prohibition on capital punishment for crimes committed by juveniles under 18." *Id.* at 576 (citing United Nations Convention on the Rights of the Child art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990)). "[E]very country in the world has ratified" this resolution, "save for the United States and Somalia." *Id.* Since 1990, "only seven countries other than the United States have executed juvenile offenders . . .: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China." *Id.* at 577. Since 1990, these countries have all either abolished capital punishment for juveniles or made it publicly apparent that the practice is disfavored. *Id.* "In sum," wrote Justice Kennedy, "it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty." *Id.*

84. *Roper*, 543 U.S. at 575. "Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty." *Id.* In addition to recent international precedent, the Court observed that

> [Al]though the international covenants prohibiting the juvenile death penalty are of more recent date, it is instructive to note that the United Kingdom abolished the juvenile death penalty before these covenants came into being. The United Kingdom's experience bears particular relevance here in light of the historic ties between our countries and in light of the Eighth Amendment's own origins. The Amendment was modeled on a parallel provision in the English Declaration of Rights of 1689, which provided: "[E]xcessive Bail ought not to be required nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 W. & M., ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1770). . . . As of now, the United Kingdom has abolished the death penalty in its entirety; but, decades before it took this step, it recognized the disproportionate nature of the juvenile death penalty; and it abolished that penalty as a separate matter.

Id. at 577.

85. *See id.* at 571.

86. *Id.*

induced a juvenile to change his or her behavior.[87]

The opinion noted that juvenile offenders rarely, if ever, make "the kind of cost-benefit analysis that attaches any weight to the possibility of execution."[88] This, hinted the Court, rendered the juvenile death penalty "residual," at best, in its deterrent power and effect.[89] In concluding its analysis, the majority noted that, especially for the young, the sanction of life imprisonment without the possibility of parole was itself a serious deterrent.[90]

The majority opinion articulated three fundamental differences between juveniles and adults, which precluded the application of "worst offender" status to juveniles.[91] First, the Court asserted that juveniles were less responsible and less mature than adults.[92] This was evidenced by the fact that they were not permitted to vote, serve on juries, or marry.[93] The Court went on to say that youth tend to possess "[a] lack of maturity and an underdeveloped sense of responsibility . . . [which] result in impetuous and ill-considered actions and decisions."[94] Second, the Court noted that juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[95] Third, "the character of a juvenile is not as well formed as that of an adult."[96] To the contrary, the Court described juveniles' personality traits as "less fixed" and "more transitory" than those of adults.[97]

These differences, together with the fact that a majority of the states had rejected the juvenile death penalty,[98] led the *Roper* majority

87. *Id.* at 571–72. *See generally* Elizabeth Cepparulo, *Roper v. Simmons: Unveiling Juvenile Purgatory: Is Life Really Better Than Death?*, 16 TEMP. POL. & CIV. RTS. L. REV. 225 (2006) (advocating against mandatory LWOR for juvenile offenders).

88. *Roper*, 543 U.S. at 572 (quoting Thompson v. Oklahoma, 487 U.S. 815, 837 (1988)).

89. *See id.*

90. *Id.* Strong evidence exists that "adult time for adult crime" laws do little to decrease recidivism because juveniles sentenced as adults—and sent to adult prisons—are vulnerable to adult criminals and mentor-mentee relationships with more powerful inmates. *See* REPORT BY THE COALITION FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING AND SENTENCING YOUTH IN ADULT CRIMINAL COURT 23–25 (2005).

91. *Roper*, 543 U.S. at 569.

92. *Id.*

93. *Id.*

94. *Id.* (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).

95. *Id.*

96. *Id.* at 570.

97. *Id.*

98. *Id.* at 568. Justice Kennedy wrote:

As in *Atkins*, the objective indicia of consensus in this case—the rejection of the

to conclude that juveniles' irresponsible conduct was less morally reprehensible than that of adults.[99] The Court declared that the death penalty, as imposed on any juvenile offender under the age of eighteen, is a disproportionate punishment because their "culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."[100] The "marked" differences between juvenile and adult offenders, the Court found, underlie the notion that juveniles should be subjected to less severe sentences than adults for the same crimes.[101]

Woven into the majority opinion in *Roper* was a nod to the rehabilitationist ideals that underlie the foundation of the first juvenile courts.[102] The differences between adults and juveniles, the *Roper* majority deduced, meant that juveniles had a greater entitlement to forgiveness for becoming trapped amongst negative influences, and that they were less likely to be irreversibly depraved in character.[103] The Court further identified that only a small percentage of juveniles who engage in problematic behavior actually continued those patterns of behavior into adulthood.[104] The Court saw juveniles as possessing a greater potential for reformation than adult offenders.[105]

The holding in *Roper* only addressed capital punishment of juveniles.[106] However, as McNaughton pointed out, the Supreme Court has noted that the Eighth Amendment proportionality principle also applies to non-capital sentences.[107] Thus, contend McNaughton and others, *Roper*'s rationale should be applied anytime a juvenile is subjected to punishments that are disproportionately harsh to their

juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice—provide sufficient evidence that today our society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal."
Id. (citation omitted).

99. *Id.* at 570 (citing Thompson v. Oklahoma, 487 U.S. 815, 835 (1988)).
100. *Id.* at 571.
101. *Id.* at 572–73.
102. *See supra* Part II.A.1.
103. *Roper*, 543 U.S. at 570.
104. *Id.* (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003)).
105. *Id.*
106. *Id.* at 575.
107. *See* McNaughton, *supra* note 29, at 1067 (citing Harmelin v. Michigan, 501 U.S. 957, 997–98 (1991) (Kennedy, J., concurring)).

level of culpability.[108]

In *State v. Behl*,[109] the statute in question automatically waived the juvenile court's jurisdiction over juveniles sixteen and seventeen years old who have been indicted for first-degree murder.[110] Under the rule in place when *Behl* was decided, automatic certification terminates juvenile court jurisdiction over all of the proceedings arising out of the same behavioral incident.[111] While that procedure withstood the Minnesota Supreme Court's constitutional scrutiny, the *Roper* rationale calls *Behl*'s holding into question.

However, the *Behl* court evaluated Minnesota's automatic certification statutes solely from a sentencing or punishment perspective. The court based its holding on the notion that "juveniles over the age of 16 who have undertaken conduct sufficient to invoke an indictment for first-degree murder, are more dangerous and less amenable to the treatment provided by the juvenile system."[112] Whether the indictment without any judicial review was constitutional was not sufficiently considered. Moreover, the court failed to consider juveniles' diminished culpability as a factor in its proportionality analysis, contrary to the Supreme Court's mandate in *Roper*.[113]

Under Minnesota statute, juveniles of a certain age are presumptively certified as adults if the crime of which they are accused is serious enough.[114] Clearly, from time to time, there will be horrible, unspeakable acts committed by juveniles. But a certification process involving individualized consideration of each accused child's unique circumstances would find those persons in adult court anyway. The "automatic" nature of the Minnesota rule does not incorporate the three cognitive differences between juveniles and adults set forth as controlling precedent in *Roper*. The Minnesota Supreme Court had an opportunity in *Behl* to appeal to that sacred notion of checks and balances and alert the legislature that the automatic certification

108. *Id*. at 1067–68.
109. 564 N.W.2d 560 (Minn. 1997).
110. MINN. STAT. §§ 260.015, subdiv. 5(b), .111 subdiv. 1a (1998) (repealed 1999) (current version at MINN. STAT. §§ 260B.007, subdiv. 6(b), .101 subdiv. 2 (2008)).
111. *Behl*, 564 N.W.2d at 563 (citing MINN. R. JUV. P. 18.08, subdiv. 1).
112. *Id.* at 568. *Cf.* Kent v. United States, 383 U.S. 541, 543 (1966). This same "amenability" language (i.e., to juvenile programming and facilities) caught the Supreme Court's attention and prompted it to vacate Kent's conviction because of the arbitrariness of the judicial waiver proceeding at which he was transferred from juvenile court to adult criminal court. *See also supra* notes 36–42 and accompanying text.
113. Roper v. Simmons, 543 U.S. 551, 571 (2005).
114. *See* MINN. STAT. § 260B.125, subdiv. 3 (2008).

statute usurped what had traditionally been the court's authority, but the court declined to do so. Instead, the *Behl* court allowed automatic certification to replace individualized decision-making.[115]

Two other cases, *State v. Mitchell*[116] and *State v. Chambers*,[117] are important in understanding the history of juvenile justice in Minnesota. In *Mitchell*, the Minnesota Supreme Court announced that the state constitution provides more protection because the disjunctive "or" allows a court to prohibit a punishment if it is cruel or unusual.[118]

In *Chambers*, the Minnesota Supreme Court upheld life without release as applied to a seventeen-year-old offender.[119] The court acknowledged that it would have applied the required analysis to determine "the proportionality of the crime to the punishment"[120] but "Chambers d[id] not dispute that a sentence of life imprisonment [was] proportionate to the heinous crime of first-degree murder of a peace officer [the crime of which he was convicted]."[121]

Because this case preceded *Roper*, the court was not obligated to take up the proportionality issue if the defendant did not argue the issue.[122] To determine whether the sentence was cruel and unusual, the court looked to the "evolving standards of decency that mark the progress of a maturing society."[123] That Chambers was the only individual to be sentenced to LWOR for a crime committed when he was under the age of eighteen did not, held the *Chambers* court, result in a constitutional violation.[124]

Chambers, however, is significant because of its legislative intent analysis, which the court uses to flesh out its "evolving standards of decency" test.[125] This "analysis" culminates with the conclusion that "the legislature intended the mandatory sentence of life imprisonment without possibility of release to apply to [seventeen]-year-olds convicted of first-degree murder of a peace officer."[126] The Minnesota

115. *See Behl*, 564 N.W.2d at 568–69.
116. 577 N.W.2d 481 (Minn. 1998).
117. 589 N.W.2d 466 (Minn. 1999).
118. *See Mitchell*, 577 N.W.2d at 488. *See also supra* note 15 and accompanying text.
119. *Chambers*, 589 N.W.2d at 480.
120. *Id.* (quoting *Mitchell*, 577 N.W.2d at 489).
121. *Id.*
122. Brief of Appellant at 22, State v. Martin, 773 N.W.2d 89 (Minn. 2009) (No. A07-1262), 2008 WL 7212055 (citing *Chambers*, 589 N.W.2d at 473).
123. *Chambers*, 589 N.W.2d at 480 (quoting Trop v. Dulles, 356 U.S. 86, 101 (1958)).
124. *Id.*
125. *Id.*
126. *Id.*

Supreme Court had an opportunity to exercise its checks-and-balances functions, and to call attention to a potential legislative infraction—the automatic sentencing law. Alternatively, or in addition, the court could have pointed out to the legislature the erosion of ideals underlying the juvenile justice system in Minnesota as evidenced by its ever-harsher treatment of juvenile offenders. Instead, the court invoked some kind of vague, utopian standard of omniscience-generated legislative productivity gleaned from a case decided in the early 1950s,[127] and noted in dicta that some recent legislative developments could *only* have been the products of a legislature clearly eclipsing a forty-year-old high-water mark for the Minnesota Legislature. Specifically, the court noted that the legislature amended Minnesota Statute section 609.184, subdivision 2 (1993), to impose a mandatory sentence of life imprisonment without possibility of release for a conviction under Minnesota Statute section 609.185 (1993).[128] Then, two years later, the legislature amended Minnesota Statute section 260.115, subdivision 1 (1998), to require automatic district court jurisdiction over sixteen- and seventeen-year-olds charged with first-degree murder.[129]

3. A Problematic Statutory Scheme in Minnesota

While rehabilitation remained an ideological goal, attaining it became even more difficult for many juvenile court jurisdictions. Either in response to fiscal or personnel shortages, or because some jurisdictions take a more hard-nosed approach to juvenile crime, virtually all U.S. jurisdictions employ mechanisms to transfer juveniles out of juvenile courts and into adult criminal court.[130] Most common-

127. The *Chambers* court presumed that "these amendments were passed by the legislature 'with deliberation and full knowledge of all existing legislation on the subject and regarded by the lawmakers as being part of a connected whole.'" Kaljuste v. Hennepin County Sanatorium Comm'n, 240 Minn. 407, 414, 61 N.W.2d 757, 762 (1953) *quoted in* Chambers, 589 N.W.2d at 480. The court uses the *Kaljuste* case, a worker's compensation matter, to explain why they did not reproach the Legislature on this troubling convergence of statutes. *See Chambers*, 589 N.W.2d at 480.

128. *Chambers*, 589 N.W.2d at 480. *See* Act of May 20, 1993, ch. 326, art. 4, § 15, 1993 Minn. Laws 1974, 2030.

129. *Chambers*, 589 N.W.2d at 480; *see also* Act of May 25, 1995, ch. 226, art. 3, § 17, 1995 Minn. Laws 1753, 1806-07.

130. Melissa Sickmund, *Juveniles in Court*, *in* Juvenile Offenders and Victims National Report Series Bulletin 6 (U.S. Dep't of Justice, Office of Juvenile Justice and Delinquency Prevention) (OJJDP) (2003), *available at* http://www.ncjrs.gov/pdffiles1/ojjdp/195420.pdf. *See also* U.S. General Accounting Office, Report to

ly, this mechanism is judicial waiver—a process through which judges, at their discretion, may waive juvenile cases into adult court.[131]

In Minnesota, there is a presumption of certification as an adult if the child was sixteen or seventeen at the time of the offense and either the sentencing guidelines create a presumption of commitment to prison or the child committed the alleged felony offense using a firearm.[132] Thus, the statute presumptively waives the juvenile court's jurisdiction over juveniles sixteen and seventeen years old who have been indicted for first-degree murder.[133] With presumptive certification, the burden at the certification hearing shifts to the defendant juvenile to show why the case should not be certified to adult criminal court.[134]

When the circumstances allow presumptive certification, the prosecutor may choose to initiate a process called "direct file."[135] This process simply involves a motion asking the juvenile court to certify the juvenile as an adult or into extended juvenile jurisdiction (EJJ).[136]

Congressional Requesters, Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions 1 (1995), *available at* http://www.nicic.org/Library/012591; OJJDP Report, *supra* note 67.

131. OJJDP Report, supra note 67, at 42.

132. MINN. STAT. § 260B.125, subdiv. 3 (2008).

Presumption of certification. It is presumed that a proceeding involving an offense committed by a child will be certified if: (1) the child was 16 or 17 years old at the time of the offense; and (2) the delinquency petition alleges that the child committed an offense that would result in a presumptive commitment to prison under the Sentencing Guidelines and applicable statutes, or that the child committed any felony offense while using, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm. If the court determines that probable cause exists to believe the child committed the alleged offense, the burden is on the child to rebut this presumption by demonstrating by clear and convincing evidence that retaining the proceeding in the juvenile court serves public safety. If the court finds that the child has not rebutted the presumption by clear and convincing evidence, the court shall certify the proceeding.

MINN. STAT. § 260B.125, subdiv. 3 (2008).

133. MINN. STAT. § 260B.007 (2008). This statute's predecessor was upheld in *State v. Behl*, 564 N.W.2d 560 (Minn. 1997).

134. Id.

135. *See* MINN. STAT. § 260B.125, subdiv. 3 (2008).

136. *See* MINN. STAT. § 260B.130 (2008). EJJ (or, as it is sometimes referred, "blended sentencing") in Minnesota,

emerged as a political compromise between those who wanted to emphasize public safety, punishment, and accountability of juvenile offenders, and those who wanted to maintain or strengthen the traditional juvenile justice system. EJJs are initially adjudicated and sentenced as juveniles though they receive all adult criminal procedural safeguards, including the right to a jury trial. Juveniles disposed EJJ receive a juvenile court disposition and a stayed adult prison sentence, based upon the Minnesota Sentencing Guidelines for adult felons. The jurisdiction of the

"Selection of the final dispositional alternative . . . is usually negotiated between the county attorney and defense attorneys,[137] subject to the approval of the judge."[138] Under "direct file" circumstances, the county attorney alone makes the critical initial decision as to whether or not to turn the juvenile into an EJJ proceeding.[139] The benefits of an EJJ proceeding to a qualifying juvenile come in the way a sentence is rendered upon conviction: the court imposes the appropriate juvenile dispositions under statute,[140] and it simultaneously stays the execution of an accompanying adult criminal sentence.[141]

However, EJJ procedures—or indeed certification processes of any kind—never apply to juveniles accused of murder who were sixteen or older at the time of the alleged offense.[142] Under the circumstances of Martin's case, certification as an adult was of a more automatic nature. The crime for which he was convicted and his age precluded classification as a "delinquent child,"[143] and consideration of the individual factors of his case was prohibited.

A juvenile accused of first-degree murder should be entitled to

juvenile court lasts until age twenty-one, hence the name "extended jurisdiction" juvenile. A court executes the stayed criminal sentence only if the EJJ fails in juvenile probation.

Fred L. Cheesman II et al., National Center for State Courts & Minnesota Supreme Court State Court Administrator's Office, Blended Sentencing in Minnesota: On Target for Justice and Public Safety? An Evaluation E-7 (2002) [hereinafter Blended Sentencing].

137. BLENDED SENTENCING, *supra* note 136, at E-10.

138. *See* MINN. STAT. § 260B.130, subdiv. 1 (2008) (declaring that a proceeding "*is* an extended jurisdiction juvenile prosecution" if the child was sixteen or seventeen at the time of the alleged offense, the Sentencing Guidelines create a presumption of a prison sentence or the felony involved firearms, and the prosecutor designated the proceeding as an EJJ prosecution in the delinquency petition) (emphasis added).

139. BLENDED SENTENCING, *supra* note 136, at E-9.

140. *See* MINN. STAT. 260B.198 (2008). These punishments, by design, are milder and of a more rehabilitative nature than those imposed on adults.

141. MINN. STAT. § 260B.130, subdiv. 4 (2008). The adult sentence could be executed by the court, without notice, if a person convicted as an EJJ juvenile violates the conditions of the stayed sentence or is alleged to have committed a new offense.

142. MINN. STAT. § 260B.130, subdiv. 6 (2008).

143. What some call "automatic waiver" or "automatic certification" *(see* State v. Behl, 564 N.W.2d 560, 563 (Minn. 1997)) is really a jurisdictional matter created by the jurisdiction set out in section 260B.101 and definition of "delinquent child" in section 260B.007, subdivision 6 (formerly at section 260.015). Section 260B.101, subdivision 2, explicitly excludes jurisdiction over anyone covered by section 260B.007, subdivision 6(b), which says that anyone sixteen years old or older who is alleged to have committed murder is not a "delinquent child." Thus the statutory definition of "delinquent child" deprives juvenile court of jurisdiction, and such defendants must be tried in criminal court. *See also supra* note 25 and accompanying text.

individualized consideration by the court to determine whether adult or juvenile court is the proper venue even if they are an older juvenile, like Martin. The seriousness of such a charge is indisputable, and a juvenile's circumstances may be deemed, after individual contemplation, to justify certification. Adult court, however, should not be the automatic response to such serious allegations against a juvenile. This is especially true when the age of the offender and the crime for which he or she is convicted are the only criteria considered in determining whether or not a juvenile is "fit" for adult court. And once the defendant is certified as an adult and convicted in adult court, the crime can, by statute, dictate a sentence of life without release—which can be imposed on the juvenile offender without a sentencing hearing of any kind.[144] This is the precise statutory framework under which Lamonte Martin's case has developed.

III. THE *MARTIN* DECISION

A. Facts

On May 3, 2006, ten-year-old S.H. witnessed a shooting from his back porch.[145] Christopher Lynch, the victim of the shooting, and his cousin, Jermaine Mack-Lynch, watched a white Chevy Malibu slow down and stop nearby.[146] Three members from what was alleged to be a rival gang, the 19 Block Dipset (19s), were passengers in the car.[147] Once the occupants of the car identified Lynch and Mack-Lynch, they exited the car and began chasing them.[148] Lynch was shot after he and Mack-Lynch separated—Lynch stopped because he was out of breath,[149] and Mack-Lynch kept running down the alley, thinking their pursuers would follow him instead of Lynch because Mack-Lynch was a member of the Tre Tre, a rival gang of the 19s.[150]

Mack-Lynch doubled back to the front of his brother's house, and told him that "One Nines" were following him.[151] They heard

144. *See* MINN. STAT. § 609.185, subdiv. a(1) (2008).
145. State v. Martin, 773 N.W.2d 89, 96 (Minn. 2009).
146. *Id.* at 95.
147. *Id.* at 96.
148. Id.
149. "Christopher said he was tired and wanted to cut through the yard: he had asthma and was overweight. Jermaine decided to keep running straight through the alley so that the others would chase him instead of Christopher." Appellant's Brief at 7, *Martin*, 773 N.W.2d 89 (No. A07-1262)(citations omitted).
150. *Martin*, 773 N.W.2d at 96.
151. Id.

gunshots and saw Lamonte Martin and Cornelius Jackson across the street firing handguns into a nearby backyard.[152] A fraction of a second later, S.H. saw Lynch get hit[153] by bullets fired from a 9-millimeter and 10-millimeter, according to the gun casings found at the scene.[154] Martin and Jackson jumped into the Malibu and drove away.[155] Mack-Lynch and his brother ran across the street to find Lynch in the backyard, seriously wounded.[156] At the scene, Mack-Lynch's brother told police that Martin and "Jonar" had shot at him.[157] He was quite reluctant, however, to talk to the police.[158]

At a house in north Minneapolis, widely reputed to be a hangout for 19s, Lamonte Martin was arrested on May 5, 2006, three days after the shooting.[159]

B. The Failure of Trying

At Martin's trial in Hennepin County, "most of the state's witnesses were gang members with past or pending criminal cases" who testified that Martin, Jackson, and their co-defendant McDaniel[160] made admissions to them about their involvement in Lynch's murder.[161] Renardo Smith reached a deal with federal prosecutors by

152. Id.
153. Id.
154. Appellant's Brief at 8, *Martin*, 773 N.W.2d 89 (No. A07-1262).
155. *Martin*, 773 N.W.2d at 96.
156. Id.
157. Appellant's Brief at 8, *Martin*, 773 N.W.2d 89 (No. A07-1262).
158. *Id.* The majority opinion in *Martin* noted the following about Mack-Lynch's interactions with law enforcement:

> During an interview with the police that same day [the day of Lynch's murder], Pettis [Mack-Lynch's brother] denied knowing the identity of the shooters. But when the investigator left the interview room, Pettis stated in a phone call to a third party: "I know who did it" but "like I'd really tell these motherf * * *ers [police] who shot my cousin." According to Pettis, he lied to the police because he "wanted to deal with it my way" by "getting revenge . . . on the street." Subsequently, Pettis saw physical evidence from the murder scene, changed his mind, and decided to cooperate.

Martin, 773 N.W.2d at 96. *See also* Appellant's Brief at 9, *Martin*, 773 N.W.2d 89 (No. A07-1262) (supporting *Martin* majority's factual account).

159. Appellant's Brief at 8, *Martin*, 773 N.W.2d 89 (No. A07-1262). The police never found the white Malibu allegedly used by Lynch's shooters. *Id.* It was not registered to Martin's mother or to her husband. *Id.* No neighbors reported ever seeing such a car. *Id.* A ballistics expert later determined that two discharged cartridge casings found at the scene were fired from a 10-millimeter Smith & Wesson located in another gang member's car. *Id.* A Glock-9-millimeter was also found in that car, and shells from that gun were also found at the murder scene. *Id.*
160. *Id.* at 9.
161. *Martin*, 773 N.W.2d at 96.

agreeing to testify against Martin in exchange for a reduction in his sentence for a federal drug charge.[162] For his part of the bargain, Smith told authorities that a cousin of McDaniel, a member of the 19s, had told Smith that police had been looking for McDaniel, and had stopped by the local hangout.[163] Later, Smith told McDaniel what the 19er had said about the police stopping by.[164] At that point, McDaniel referred to the shooting and mentioned that he had only been the driver.[165]

The same prosecutor who prosecuted Martin's case in Hennepin County dismissed a pending second-degree assault charge for Paris Patton, another witness for the state in Martin's case. Patton's charge was dismissed in July 2006 and Martin's trial did not begin until January 2007, but it is a reasonable inference that an arrangement was made in exchange for Patton's testimony.[166] Patton may also have received a sentence reduction motion in federal court.[167] Patton testified that he had spoken with McDaniel after the shooting. McDaniel told him that he (McDaniel) wanted a gun because he had used his to "shoot a boy walking with Jermaine."[168]

Kiron Williams, a convicted felon, testified next.[169] Williams was in federal custody on narcotics charges.[170] He testified that Martin and Jackson "bragged to him about chasing . . . Mack-Lynch and Lynch, that Mack-Lynch got away, and then he caught up with Lynch, who pleaded for his life before he was shot."[171] He went on to say that Martin wanted Williams to help him hide because he knew the police were after him.[172] Interestingly, Williams did not make these allegations until he spoke with officers in February 2007.[173] He said that it had "slipped his mind" when he first spoke with officers a month earlier.[174]

162. Appellant's Brief at 9, *Martin*, 773 N.W.2d 89 (No. A07-1262).
163. *Id.* at 9–10 (citations omitted).
164. Id.
165. *Id.* at 10 (citations omitted).
166. *Id.* (citing Transcript, *supra* note 3, at 1756).
167. *Id.* (citing Transcript, *supra* note 3, at 1698).
168. *Id.* (citing Transcript, *supra* note 3, at 1729).
169. *Id.* at 11 (citing Transcript, *supra* note 3, at 1869).
170. State v. Martin, 773 N.W.2d 89, 96 (Minn. 2009).
171. *Id.* at 96–97.
172. Appellant's Brief at 11, *Martin*, 773 N.W.2d 89 (No. A07-1262) (citing Transcript, *supra* note 3, at 1885). Williams said that Martin pointed out the crime scene, distinguished by the crime-scene tape, shortly after the shooting. *Id.* (citing Transcript, *supra* note 3, at 1886).
173. *Id.* (citing Transcript, *supra* note 3, at 1915).
174. *Id.* (citing Transcript, *supra* note 3, at 1915).

To bolster the second count of the indictment—crime committed for the benefit of a gang (with an underlying crime of premeditated murder)—the State called Minneapolis Police Captain Michael Martin, a member of the special operations division, as its gang expert.[175] Captain Martin "opined that the 19 Block Dipset was a gang in north Minneapolis whose color was pink and whose rivals were the Murder Squad, Emerson Murder Boys, and Tre Tre Crips."[176] According to Captain Martin, gangs may engage in assaults, drug trafficking, and "drive-by's."[177] He stated that "retaliation and respect are 'the foundation for the gang culture.'"[178] He could not, however, provide detailed information about the timing and structure of the 19s' organization.[179]

On March 6, 2007, the jury returned a guilty verdict on both counts.[180] On March 28, 2007, Martin was sentenced on Count I (first-degree premeditated murder) to life without parole (no possibility of release).[181] Martin filed his notice of appeal on June 26, 2007,[182] and the Supreme Court of Minnesota heard oral arguments regarding Martin's appeal on January 14, 2009.[183]

C. The Martin *Majority*

1. Statutory Structure

The Minnesota Supreme Court affirmed Martin's conviction in an opinion released on October 8, 2009.[184] In addressing Martin's claim that sentencing a juvenile (at the time the crime was committed) to life in prison without the possibility of release under Minnesota law[185] violated the Eighth Amendment's prohibition against cruel

175. *Martin*, 773 N.W.2d at 97.
176. Brief of Appellant at 11, *Martin*, 773 N.W.2d 89 (No. A07-1262).
177. *Id.* at 11 (citing Transcript, *supra* note 3, at 2058).
178. *Martin*, 773 N.W.2d at 97.
179. Brief of Appellant at 11–12, *Martin*, 773 N.W.2d 89 (No. A07-1262).
180. *Id.* at 2.
181. Id.
182. Id.
183. *See* State of Minnesota, Supreme Court Calendar January 2009, at 3, http://www.mncourts.gov/Documents/0/Public/Calendars/January_2009.pdf.
184. State v. Martin, 773 N.W.2d 89, 89 (Minn. 2009).
185. *See* MINN. STAT. §§ 260B.007, subdiv. 6(b) (2008) (excluding those "alleged to have committed murder in the first degree after becoming 16 years of age" from definition of delinquent child); § 260B.101, subdiv. 1 (2008) (giving the juvenile court original and exclusive jurisdiction only in proceedings concerning children alleged to be delinquent).

and unusual punishment, the court indicated that the constitutionality of statutes was a question reviewed de novo.[186] This was effectively the end of the court's discussion of Minnesota's statutory scheme.

2. *Eighth Amendment: "Cruel or Unusual" and/or "Cruel and Unusual"*

Martin urged the court to consider that the differences between juveniles under eighteen and adults render them "less responsible for their conduct than adults and, therefore, a sentence of LWOR is unconstitutional as cruel and unusual punishment."[187] *Chambers*, Martin argued, should be overruled in light of *Roper*.[188] The court, however, latched on to the *Roper* court's statement that "LWOR for a juvenile is a more palatable alternative to the juvenile death penalty."[189] *Roper*, the Minnesota court concluded, does not provide a compelling reason to overrule *Chambers*.[190]

The *Martin* majority seems nonplussed by Martin's arguments that there is an emerging consensus—an evolving standard of decency—against sentencing juveniles to LWOR.[191] As *Roper* pointed out, the *Martin* majority notes that only seven states prohibit juvenile LWOR.[192] Additionally, after the Supreme Court's 1989 decision in *Stanford v. Kentucky*[193] affirming the death penalty for juveniles, only a few were executed before that case was overruled by *Roper* in 2005.[194] The *Martin* majority contrasts this small figure with that of the 2484 juvenile offenders serving LWOR,[195] and concludes that Martin did not present sufficient evidence to show an emerging consensus against sentencing juveniles to LWOR.[196]

The court also declines to be swayed by the *Roper* court's marshaling of facts and figures. As the *Martin* majority noted, "While the

186. *Martin*, 773 N.W.2d at 97.
187. Id.
188. *Id.* at 97-98.
189. *Id.* at 98 (citing Roper v. Simmons, 543 U.S. 551, 572 (2005)).
190. Id.
191. *Id.* (citing Human Rights Watch, Executive Summary, The Rest of Their Lives: Life Without Parole for Youth Offenders in the United States 3 (2008), *available at* www.hrw.org/backgrounder/2008/us1005/us1005execsum.pdf [hereinafter Executive Summary]).
192. Id.
193. 492 U.S. 361 (1989).
194. *Martin*, 773 N.W.2d at 98 (citing Roper v. Simmons, 543 U.S. 551, 564 (2005)).
195. *Id.* (citing to EXECUTIVE SUMMARY, *supra* note 191).
196. Id.

Court did look at international law in *Roper*, it did so for 'confirmation' of its determination, specifically stating that '[t]his reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility.'"[197]

Martin also asserted that the Minnesota Constitution prohibits cruel or unusual punishments, meaning that the court should prohibit a punishment if it is either cruel or unusual.[198] In response, the court pointed out that the cases Martin used to support his contention involved as-applied challenges brought by juvenile offenders younger than Martin.[199] The court observed that "states with similar constitutions" have found LWOR unconstitutional as applied to juveniles under the age of sixteen, but Martin was six weeks away from his eighteenth birthday.[200] Because Martin did not offer direct authority to support his contention that LWOR is unconstitutional for a seventeen-year-old, his sentence was held to be constitutional.[201] So concludes Part I of the *Martin* opinion.

Parts II through VI set forth the court's responses to procedural issues brought by Martin on appeal. In Part II, the majority addressed the joinder of Martin's trial with that of a co-defendant. The court opined that the potential trauma to S.H., the ten-year-old who saw the murder from his porch, would have increased considerably if separate trials had been ordered.[202] It concluded that no substantial prejudice resulted from the joinder, so the cases were properly joined for trial.[203]

Part III addressed Martin's argument that the district court erred in sustaining the prosecutor's peremptory challenge of a prospective juror. That juror, an African American, expressed his belief that the system was unfair to African Americans.[204] The state made its peremptory challenge, and subsequently the defense asserted a challenge pursuant to *Batson v. Kentucky*.[205] This portion of the court's analysis was the lengthiest, as it had to address how the trial court handled the

197. *Id.* at n.3 (quoting *Roper*, 543 U.S. at 575).
198. *Id.* at 98–99; *see also supra* note 15 and accompanying text.
199. *Martin*, 773 N.W.2d at 99 (citing People v. Miller, 781 N.E.2d 300 (Ill. 2002); Workman v. Commonwealth, 429 S.W.2d 374 (Ky. 1968); Naovarath v. State, 779 P.2d 944 (Nev. 1989)).
200. Id.
201. Id.
202. *Id.* at 100.
203. Id.
204. *Id.* at 101–02.
205. 476 U.S. 79 (1986) (establishing a three-step framework for determining whether a peremptory challenge is motivated by racial discrimination).

three steps of the *Batson* framework.[206] The majority concluded that the district court followed the *Batson* procedure appropriately, and that its decision to sustain the state's peremptory challenge to the juror at trial was not clearly erroneous.[207]

D. The Martin *Dissent*

The dissent in *Martin* addressed solely the issue of the *Batson* challenge at trial.[208] It concluded that the views expressed by the prospective juror during jury selection, which formed the basis for the prosecution's peremptory challenge, were "consistent with what this court has found in its own review of whether African Americans are treated unfairly in our judicial system."[209] Such views, the dissent continued, "cannot constitute a legitimate non-discriminatory reason that would support the juror's exclusion."[210]

IV. ANALYSIS OF THE *MARTIN* DECISION

A. "Play it Close to the Vest"—The Inspiration for Justice Page's Dissent?

The *Martin* dissent was sufficient in its analysis of the *Batson* scenario that played out during trial, but its reluctance to take up any constitutional issues made it a disappointing though well-reasoned end following the majority's unremarkable beginning. Addressing substantive constitutional issues, of course, is within the court's purview, and either the majority or dissent could have commented on the unconstitutionality of juvenile LWOR sentencing, or on the troubling statutory convergence currently in effect in Minnesota. A statement or two about the historic foundations of juvenile justice, or the direction in which it seems to be headed—assessed either from a state-specific or national vantage point—would have been appropriate.

The issue of juvenile LWOR is currently being considered by the U.S. Supreme Court, and an opinion could be forthcoming in the 2010 session. In November 2009, the Court heard oral arguments in two separate cases from Florida in which two men, juveniles at the

206. *Martin*, 773 N.W.2d at 102–04.
207. *Id*. at 104; *see generally Batson*, 476 U.S. 79 (1992).
208. *Martin*, 773 N.W.2d at 110 (Page, J., dissenting).
209. Id.
210. Id.

time of their crimes, were sentenced to life in prison.[211] Should the Court revive the "evolving standards of decency" gauge employed in *Roper* to determine the fate of these Florida men, it may well look to states that have recently dealt with the issue."[212] A dissent highlighting or commenting on some of the constitutional or statutory convergence issues present in Martin's case would have alerted the U.S. Supreme Court to some compelling concerns about juvenile LWOR in Minnesota, and across the country.

B. Majority Rules: Justice Dietzen Throws Away the Key

In nine succinct paragraphs, the *Martin* majority dismisses Martin's claims that LWOR as applied to a seventeen-year-old is cruel and unusual.[213] In declining to overrule *Chambers*, the court effectively ignores the veritable mountain of scientific research presented in *Roper* that established quite conclusively that juveniles' culpability is mitigated by the very fact that they are juveniles.[214]

It also ignores the emerging consensus among other states against juvenile LWOR. In *Naovarath v. State*,[215] for example, the Nevada Supreme Court reversed a sentence of life without parole for a juvenile found guilty of murder.[216] The Nevada constitution, like that of Minnesota, prohibits cruel or unusual punishment.[217] Similarly, in *Workman v. Commonwealth*,[218] the Kentucky Supreme Court held a sentence of life imprisonment without parole to be unconstitutional as applied to a fourteen-year-old.[219] That court noted that the sentence of LWOR "shocks the general conscience of society today and is intolerable to fundamental fairness," and that while "the intent of the legislature in providing a penalty of life imprisonment without benefit of parole . . . undoubtedly was to deal with dangerous and incorrigible individuals who would be a constant threat to

211. Sullivan v. Florida, 987 So.2d 83 (Fla. 1 Dist. Ct. App. 2008), *cert. granted*, 129 S. Ct. 2157 (2009) (U.S. May 4, 2009) (No. 08-7621); Graham v. Florida, 982 So.2d 43 (Fla. 2 Dist. Ct. App. 2008), *cert. granted*, 129 S. Ct. 2157 (2009) (U.S. May 4, 2009) (No. 08-7412).

212. Roper v. Simmons, 543 U.S. 551, 561 (2005).

213. *Martin*, 773 N.W.2d at 97–99.

214. *See Roper*, 543 U.S. 551.

215. 779 P.2d 944 (Nev. 1989).

216. *Id.* (finding that sentence of life imprisonment without possibility of parole imposed on thirteen-year-old defendant was cruel and unusual under both Federal and Nevada Constitutions).

217. NEV. CONST. art. I, § 6; *see also supra* note 15 and accompanying text.

218. 429 S.W.2d 374 (Ky. 1968).

219. *Id.* at 378.

society[,] . . . incorrigibility is inconsistent with youth."[220]

Using similar reasoning, the Illinois Supreme Court in *People v. Miller*[221] declined to impose the sentence of LWOR on a fifteen-year-old, despite the fact that such a sentence was mandated by state statute.[222] The court also noted that the statutes do not permit consideration of the actual facts of the crime, including the defendant's age or individual level of culpability.[223] Further, it found that the sentence mandated by statute was "unconstitutionally disproportionate."[224] The *Miller* court's decision reveals that constitutional problems are inherent in any system in which juveniles are tried as adults and no consideration is given to the juvenile's competency, culpability, and capacity for the offense, or the juvenile's role in its attempt or completion.[225]

The *Martin* majority distinguishes all of these holdings by noting that the defendants in those cases were all under the age of sixteen—younger than Martin, who was almost eighteen at the time of the crime.[226] So his situation *could not possibly* have had anything in common with the thirteen-, fourteen-, and fifteen-year-olds in *Naovarath*, *Workman*, and *Miller*, respectively.

But the *Martin* court neglects to point out the similarity in statutory schemes between the *Miller* and *Martin* cases. The *Miller* court noted that the faulty legislative framework, under which the Illinois LWOR sentence resulted, came from "three converging statutes" which, cumulatively, left no room for justice to function.[227] First, an automatic transfer provision put fifteen- and sixteen-year-old in adult court without any individual consideration of the maturity of the defendant.[228] A second statute required that the court consider the defendant, who had not been the shooter, "equal to the actual shooter" and thus required the juvenile defendant to be tried as if he were the adult shooter.[229] Third, just as in Minnesota, a sentencing statute required a mandatory life sentence and did not allow the court to consider any mitigating factors, including age or defendant's

220. Id.
221. 781 N.E.2d 300 (Ill. 2002).
222. Id.
223. Id.
224. *Id.* at 341.
225. Id.
226. State v. Martin, 773 N.W.2d 89, 99 (Minn. 2009).
227. *See Miller*, 781 N.E.2d at 340.
228. Id.
229. Id.

participation, when deciding how to sentence the juvenile.[230]

> The Illinois court concluded that the legislative scheme eliminates the court's ability to consider any mitigating factors such as age or degree of participation. A life sentence without the possibility of parole implies that under any circumstances a juvenile defendant convicted solely by accountability is incorrigible and incapable of rehabilitation for the rest of his life. The trial judge in this case did not agree with such a blanket proposition.[231]

Illinois, Connecticut, Florida, Louisiana, Massachusetts, and Minnesota are the only states to have statutory schemes under which a juvenile is mandatorily certified as an adult and mandatorily sentenced to life without release.[232] Because of this, the Minnesota Supreme Court could have addressed, at the very least, the issue of statutory convergence in Minnesota in its *Martin* opinion.

C. More on this Later: How Forthcoming U.S. Supreme Court Opinions Could Shake Up the Martin *Holding*

In May 2009, the U.S. Supreme Court granted certiorari in two Florida cases, *Sullivan v. Florida*[233] and *Graham v. Florida*.[234] Both of these cases involve LWOR sentences imposed on juveniles subsequent to their convictions for rape and armed robbery, respectively. The Court heard arguments on November 9, 2009. Joe Sullivan, now thirty-three, was convicted of sexual battery at age thirteen and sentenced to life without parole.[235] He was with two older accomplices at the time of the crime, and it was their testimony that primarily convicted him.[236] Though it was Sullivan's first felony conviction, he was sentenced to life in prison without parole.[237] His court-appointed lawyer filed no appeals on Sullivan's behalf[238] and was later disbarred.[239]

230. *Id. See* MINN. STAT. § 609.185 (2008).
231. *Miller*, 781 N.E.2d at 343–43.
232. Appellant's Brief at 24, State v. Martin, 773 N.W.2d 89 (Minn. 2009) (No. A07-1262).
233. 987 So. 2d 83 (Fla. Dist. Ct. App. 2008), *cert. granted*, 129 S. Ct. 2157 (2009) (No. 08-7621).
234. 982 So. 2d 43 (Fla. Dist. Ct. App. 2008), *cert. granted*, 129 S. Ct. 2157 (2009) (No. 08-7412).
235. Brief for Petitioner at 2, *Sullivan*, 129 S. Ct. 2157 (No. 08-7621).
236. Petition for Writ of Certiorari at 5, *Sullivan*, 129 S. Ct. 2157 (No. 08-7621).
237. *Id.* at 6.
238. Id.
239. *See* Equal Justice Initiative, http://eji.org/eji/childrenprison/deathinprison/

Terrance Graham, at age sixteen, participated in a robbery during which an accomplice hit the store manager with a metal pipe.[240] While on probation for that crime, he was arrested as he fled the scene of another armed robbery.[241] Though technically a probation violation, Graham's conviction for this crime resulted in a sentence of life without release.[242] That sentence is interesting because the Florida Department of Corrections had recommended that Graham receive a sentence of four years in prison, or twenty-four months in prison and twenty-four months of community service.[243]

Neither Sullivan's nor Graham's crimes involved a death. Yet both defendants were sentenced to the very same punishment imposed on the most heinous murderers in jurisdictions that have outlawed the death penalty. Certainly the state should be allowed to seek retribution, even on behalf of the victims of crimes, capital or not. But one must wonder if the system is working as well as it could when a juvenile is sentenced to life in prison forever—without even a chance at release—as a result of a probation violation. During oral argument in *Sullivan*, Justice Stephen Breyer explained that an "area of ambiguity" encompasses the issue of what justifies a sentence of life without release or parole in a particular juvenile case.[244] There are those who advocate for a bright-line rule that no person under eighteen should be sentenced to life without release, and those who support a system in which a particular crime, regardless of its perpetrator, triggers a particular punishment. In line with this latter perspective, homicide, if committed by a juvenile or an adult, might mean a sentence of LWOR for both age groups, if that is an option in that jurisdiction.

If the Supreme Court holds in the Florida defendants' favor, and if the language of those opinions does not limit the holding to non-capital crimes—that is, if it holds that the sentence of life without release as imposed on juveniles is unconstitutional, *regardless* of the crime of which they are convicted, then *Martin* would be impacted. Much the way *Roper* eliminated death as a punitive option and compelled legislative or judicial "re-sentencing" of each juvenile offender who had been sentenced to die prior to that holding, the

sullivan.graham (last visited Apr. 18, 2010).

240. Graham v. State, 982 So. 2d 43, 45 (Fla. App. Dist. 2008).

241. Id.

242. Id.

243. Brief for the Petitioner at 20, *Graham*, 982 So. 2d 43 (No. 08-7412) (U.S. argued Nov. 9, 2009).

244. Transcript of Oral Argument at 35, *Sullivan*, 129 S. Ct. 2157 (No. 08-7621).

Supreme Court's forthcoming decisions in *Sullivan* and *Graham* could mean that Martin and those similarly situated in both the federal and state criminal justice systems are constitutionally entitled to reevaluation of their LWOR sentences, even if they serve time for homicide.

The distinction between homicide and non-homicide crimes would be of considerably less importance if, in its anticipated *Sullivan* or *Graham* opinions, the Supreme Court resuscitates *Roper's* foundational premise, buoyed by thorough and compelling research, that juveniles are different by virtue of their brain development and thus inherently less culpable than adult offenders. Additionally, the Court could also revive *Roper*'s "evolving standards of decency" gauge to assess the national consensus regarding the imposition of LWOR on juveniles. If the Court were to make or accept findings that this consensus was that LWOR as imposed on juveniles is cruel, unusual, and lacking requisite deterrent effect, then the "standards," having evolved, could lay the foundation for a declaration by the Court that LWOR as imposed on juveniles is unconstitutional.

The Supreme Court's definition of "juvenile," if it provides one, could also mean different results for Martin and for Sullivan and Graham; perhaps a "sliding scale" for optimal age-offense correlation. Martin was seventeen at the time of the commission of his crime, whereas Sullivan was thirteen. If "juvenile," by definition, does not include offenders who committed their crimes six weeks before their eighteenth birthdays, then *Martin* might remain unaffected. It will also be interesting to track if and how the Supreme Court addresses the trial judge in Graham's case and his drastic upward departure—from the recommended four years to the sentence of LWOR. Prohibitions of such actions, as well as admonishments to legislatures to reevaluate and restructure troubling auto-certification statutory glitches, could very well accompany any constitutional declarations.

D. Navigating the Means, Ends, and Mean Endings: Formulating Recommendations for Juvenile Sentencing Reform

The *Martin* opinion gave short shrift to constitutional issues, as did the dissent, but perhaps it is understandable why the Minnesota Supreme Court proceeded in this way. Constitutional line-drawing, such as prohibition of the juvenile death penalty on Eighth Amendment grounds,[245] is difficult to do in an article such as this, let alone to do so in a way that affects real people on the ground, or, as it were, in

245. *See* Roper v. Simmons, 543 U.S. 551, 573–74 (2005).

prison for life. But it is not impossible and it is within the province of judges to draw these lines. The U.S. Supreme Court drew such a line in *Roper* by concluding that sentencing juveniles to the death penalty was unconstitutional.[246] Even with the social, biological, and neurological research supporting the Court's reasoned conclusion,[247] it took great courage to assert the new constitutional mandate set out in that opinion.

On the other hand, it makes some sense to avoid belaboring issues that have been previously settled, especially in light of considerations such as the value of finality and the preservation of constitutional integrity. In *Martin*, the Minnesota Supreme Court was not persuaded by *Roper*'s logic and unwilling to divorce itself from principles of stare decisis,[248] but it cannot be severely faulted for focusing on the important and somewhat unusual procedural aspects of Martin's case and trial. So, short of judicially-instigated, constitutional line-drawing, what should be done about juvenile sentencing reform in general? Risks inherent in answering these questions include arbitrariness and moralizing without any kind of reasoned foundation, but this discussion can and must continue while being mindful of such concerns. The Minnesota Supreme Court could have brought the issue to the attention of the Minnesota Legislature (or Congress) by prefacing their remarks in this way. Building upon that, the court could certainly call to the Legislature's attention to the fact that Martin's sentence—the harshest this state can impose—was the result of a disconcerting convergence of the automatic certification and automatic LWOR statutes.[249] Doing so would not require any constitutional wrangling, and it is not something the court appears to want to avoid.[250]

246. *Id.* at 578–79.

247. *See id.* at 573–74.

248. State v. Martin, 773 N.W.2d 89, 98 (Minn. 2009) ("[The court is] 'extremely reluctant to overrule [its] precedent under principles of *stare decisis*'") (quoting State v. Lee, 706 N.W.2d 491, 494 (Minn. 2005)).

249. *See* Minn. Stat. § 260B.007, subdiv. 6(b) (2008); Minn. Stat. § 260B.101, subdiv. 2 (2008); Minn. Stat. § 609.185 (2008).

250. On October 22, 2009, just two weeks after the Martin opinion was issued, the Minnesota Supreme Court decided *State v. Peck*, "the bong water case." 773 N.W.2d 768, 773 (Minn. 2009) (holding that bong water that tested positive for methamphetamine was a "mixture" for purposes of charge alleging possession). In his dissent, Justice Paul Anderson notes that the Minnesota Legislature "attempted" to assess the risks in punishing non-violent drug offenders when it enacted chapter 152, which differentiates between less serious and more serious drug offenders by the weight of the controlled substance at issue in that case. *Id.* at 782 (Anderson, J., dissenting). The law, Justice Anderson conceded, was applied correctly by the district court and

Recent coverage of juvenile LWOR sentencing by major media outlets demonstrates that the issue is moving to the fore of the nation's consciousness.[251] This suggests that standards of decency *are* evolving, or at least being reconsidered. The aforementioned cases pending at the Supreme Court are examples of this trend, and there have been several attempts by members of Congress within the last few sessions to revisit the issue of juvenile LWOR and reform thereof. This legislation, if enacted, would encourage states to modify and soften their juvenile justice policies in exchange for federal aid.[252] Proposals such as these anticipate indeterminacy in sentencing on the front end of the process (i.e., at sentencing following trial and conviction, but before protracted incarceration). They do not bar the imposition of the sentence of LWOR on juveniles; rather, they allow for broader and more significant protections for young people convicted of serious crimes.

But in jurisdictions where automatic certification statutes con-

the court of appeals, but he criticizes the *Peck* majority for ultimately affirming the prosecuting county's constitutionally-questionable interpretation of the state law, and taking it in "an improper and counterproductive direction." *Id.* While his frustration with the majority on this point is obvious, it is also a call to the Minnesota Legislature to reassess the risks of "punishing non-violent drug offenders who are presently swelling our prison populations beyond capacity." *Id.* It is likely that Justice Anderson's solution to this problem included a reworking of legislative text to insure a fairer and more public policy-minded result. Likewise, either the majority or dissent in *Martin* could have noted the statutory convergence, the automatic, non-reviewable LWOR sentence that resulted, and the value of such a revision process in his case and others like it.

251. *E.g.*, Editorial, *De-Criminalizing Children*, N.Y. TIMES, Dec. 17, 2009, at A46; *Supreme Court Weighs Life Sentences for Juveniles* (National Public Radio broadcast Nov. 9, 2009).

252. For example, Senator Patrick Leahy of Vermont introduced a bill to reauthorize the Juvenile Justice Delinquency and Prevention Act of 1974, which included modifications such as disallowing contact between juvenile and adult offenders (if the two age groups were housed at the same correctional facility), and later, in an amended version of the Act, limiting even further the circumstances under which juveniles could be ordered to serve their sentences in adult prisons in the first place. *See* S. 3155, 110th Cong., 2d Sess. (as reported by S. Comm. on the Judiciary, July 31, 2008); Juvenile Justice and Delinquency Prevention Act of 1974, P.L. 93-415, 88 Stat. 1109 (codified as amended at 42 U.S.C. 5601 *et seq.* (2002)). Similarly, Congressman Robert Scott of Virginia, in May 2009, introduced the Juvenile Justice Accountability and Improvement Act of 2009, which grants juvenile offenders serving life sentences opportunities for parole or supervised release "not less than once during their first 15 years of incarceration, and not less than once every 3 years thereafter . . . ." This bill also awards grants to states to improve legal representation for child defendants charged with an offense carrying a possible sentence of life in prison. H.R. 2289, 111th Cong., 1st Sess. (2009). Neither of these bills ever made it out of subcommittee hearings.

verge with statutes linking a sentence of LWOR to crimes deemed severe enough, Congress (or state legislatures, at their discretion) should consider enacting an "override" function on the front end of the process, mandating that juveniles sentenced to LWOR under these circumstances be granted regular reviews on a case-by-case basis. These reviews should be completed early on, especially at the certification stage and at the sentencing stages, to ensure that sound reasoning and consideration of *all* relevant factors—and not haphazard moralizing and statutory constructs—underlie the sentencing orders imposed on juveniles in Minnesota.

V. CONCLUSION

Roper stands for the fundamental proposition that children are different.[253] Bolstered by comprehensive social science research, the U.S. Supreme Court reasoned that sentencing juveniles to the death penalty was unconstitutional.[254] It is cruel. It is unusual. It sends the message to our youth that society does not believe in their rehabilitation. Similarly, a sentence of life without release is mercilessly skeptical of a child's potential for growth and redemption.

A timely comment by a Hennepin County trial court judge sums it up nicely: "Life with the possibility of parole does not mandate release. It does give a future generation the opportunity to reflect, [and to] exercise compassion if appropriate."[255]

Because Minnesota's automatic certification statutes deny juveniles any hearing whatsoever, these statutes deny juveniles due process, and subject them to unduly harsh punishments in adult court. In light of these cases and the legal concepts they explain, Minnesota's highest court should have declared the automatic treatment unconstitutional. The court missed an opportunity to do so with its decision in *State v. Martin*.

253. 543 U.S. 551 (2005).
254. Id. at 578–79.
255. Posting of Hon. Kevin Burke to Sentencing Law and Policy, http://sentencing.typepad.com/sentencing_law_and_policy/2009/10/minnesota-supreme-court-rejects-constitutional-arguments-against-lwop-sentence-for-17yearold-murdere.html (Oct. 15, 2009, 10:13:20).